

**FILED**

**MAY 28 2013**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-4406

**ROBERTA LYNN SOTELO**

**880 E. Cleveland Avenue,  
Porterville, California 93257**

**Vocational Nurse License No. VN 145070**

Respondent.

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about August 15, 1989, the Board issued Vocational Nurse License Number VN 145070 to Roberta Lynn Sotelo ("Respondent"). Respondent's vocational nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

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**STATUTORY PROVISIONS**

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct . . .

. . . .

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction . . .

6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof . . .

1           7.     Code section 2878.6 states:

2                     A plea or verdict of guilty or a conviction following a plea of nolo  
3                     contendere made to a charge substantially related to the qualifications, functions and  
4                     duties of a licensed vocational nurse is deemed to be a conviction within the meaning  
5                     of this article. The board may order the license suspended or revoked, or may decline  
6                     to issue a license, when the time for appeal has elapsed, or the judgment of conviction  
7                     has been affirmed on appeal or when an order granting probation is made suspending  
8                     the imposition of sentence, irrespective of a subsequent order under the provisions of  
9                     Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty  
10                    and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
11                    the accusation, information or indictment.

12           8.     Health and Safety Code section 11170 states that no person shall prescribe,  
13           administer, or furnish a controlled substance for himself.

14           9.     Health and Safety Code section 11377, subdivision (a), states:

15                     Except as authorized by law and as otherwise provided in subdivision (b)  
16                     or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of  
17                     Division 2 of the Business and Professions Code, every person who possesses any  
18                     controlled substance which is (1) classified in Schedule III, IV, or V, and which is not  
19                     a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs  
20                     (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of  
21                     subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision  
22                     (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,  
23                     unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,  
24                     licensed to practice in this state, shall be punished by imprisonment in a county jail  
25                     for a period of not more than one year or pursuant to subdivision (h) of Section 1170  
26                     of the Penal Code.

### 27                                     **COST RECOVERY**

28           10.     Code section 125.3 provides, in pertinent part, that the Board may request the  
29           administrative law judge to direct a licensee found to have committed a violation or violations of  
30           the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
31           enforcement of the case.

### 32                                     **CONTROLLED SUBSTANCES**

33           11.     “Methamphetamine” is a Schedule II controlled substance as designated by Health  
34           and Safety Code section 11055, subdivision (d)(2).

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**FIRST CAUSE FOR DISCIPLINE**

**(Criminal Conviction)**

12. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (f), in that on or about September 7, 2012, in Tulare County Superior Court, Case No. PCF 264044, Respondent pled guilty to violating Health and Safety Code sections 11377, subdivision (a) (possession of a controlled substance), a felony, 11550, subdivision (a) (under the influence of a controlled substance), a misdemeanor, and 11364, subdivision (a) (possession of a smoking device), a misdemeanor, and Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor, crimes substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows: On or about April 22, 2011, a California Highway Patrol ("CHP") officer conducted an enforcement stop on a vehicle because the registration was expired. The officer contacted the driver, Respondent, and asked to see her license. Respondent stated she did not have a driver's license. The officer determined that Respondent's driver's license had been suspended. The officer asked Respondent if she was carrying any weapons or drugs. Respondent told the officer that she was not and that he could check "if he wanted." The officer opened Respondent's purse and found a glass pipe commonly used to smoke Methamphetamine. The officer also found a small plastic bindle containing a white crystalline substance, which was later tested and determined to be Methamphetamine. The officer arrested Respondent for possession of Methamphetamine and drug paraphernalia. The officer completed a Drug Recognition Evaluation ("DRE") of Respondent and determined that she was under the influence of a central nervous system stimulant. Respondent told the officer that she began using "Meth" due to peer pressure. When asked if she was addicted to "Meth", Respondent said "I guess". Respondent admitted that she used approximately \$40 worth of Methamphetamine per week and smoked it with a glass pipe, that she last smoked Methamphetamine at approximately 1600 or 1700 hours that day, and that she still felt the effects of the Methamphetamine during the DRE. Respondent was transported to Sierra View District Hospital in Porterville where she submitted to a blood draw. Respondent's blood sample tested positive for Methamphetamine.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Possession and Self-Administration of Controlled Substances)**

3 13. Respondent is subject to disciplinary action pursuant to Code section 2878,  
4 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2878.5,  
5 subdivision (a), in that Respondent did the following:

6 **Possession of Controlled Substances:**

7 a. On or about April 22, 2011, Respondent possessed the controlled substance  
8 Methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a), as set  
9 forth in paragraph 12 above.

10 **Self-Administration of Controlled Substances**

11 b. On or about April 22, 2011, Respondent self-administered the controlled substance  
12 Methamphetamine without lawful authority therefor, as set forth in paragraph 12 above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Use of Controlled Substances to an Extent or in a Manner**

15 **Dangerous or Injurious to Oneself and Others)**

16 14. Respondent is subject to disciplinary action pursuant to Code section 2878,  
17 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2878.5,  
18 subdivision (b), in that on or before April 22, 2011, Respondent used the controlled substance  
19 Methamphetamine to an extent or in a manner dangerous or injurious to herself and others, as set  
20 forth in paragraph 12 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Criminal Conviction Involving Use of Controlled Substances)**

23 15. Respondent is subject to disciplinary action pursuant to Code section 2878,  
24 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2878.5,  
25 subdivision (c), in that on or about September 7, 2012, Respondent was convicted of a criminal  
26 offense involving the possession and self-administration of the controlled substance  
27 Methamphetamine, as set forth in paragraph 12 above.

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1 **MATTERS IN AGGRAVATION**

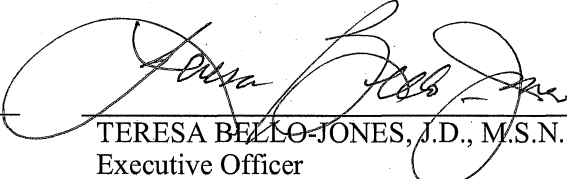
2 16. To determine the degree of discipline to be assessed against Respondent, if any,  
3 Complainant alleges as follows: On or about May 7, 2008, a representative of the Board sent  
4 Respondent a letter, notifying her that they had completed their review of her self-reported  
5 positive test for Methamphetamine (Respondent submitted a Declaration to the Division of  
6 Investigation, Department of Consumer Affairs, in which she admitted to using  
7 Methamphetamine in 2003). The representative informed Respondent that the Board would not  
8 pursue disciplinary action against her since it had been several years since the violation. The  
9 representative warned Respondent that future substantiated reports that she had engaged in  
10 similar behavior or otherwise violated the laws or regulations governing her practice as a  
11 vocational nurse may result in formal disciplinary action against her license.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
15 issue a decision:

- 16 1. Revoking or suspending Vocational Nurse License Number VN 145070, issued to  
17 Roberta Lynn Sotelo;
- 18 2. Ordering Roberta Lynn Sotelo to pay the Board of Vocational Nursing and  
19 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
20 pursuant to Business and Professions Code section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: May 28, 2013

24   
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
25 Executive Officer  
26 Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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